HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 4646/2001 (M/S)
(Old No. 11743/1995)
Smt. Neema Begum & others

Vs

3rd Addl. District Judge
Dehradun & others.

Approved for reporting

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~~Not Approved for Reporting~~

Date of decision 23.8.2004.

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 4646 of 2001 (MS)
(Old No. 11743/1995)

Smt. Neema Begum & others ..... Petitioners

Versus

3rd Addl. District Judge, Dehraun & others ..... Respondents

Sri Vinai Kumar, Advocate for the petitioners
Sri Anil Dabral, Advocate for the respondent no.3.

Dated: 23.8.2004

Hon. Rajesh Tandon J.

Heard the learned counsel for the parties.

By the present writ petition the petitioner has challenged the order dated 15.12.1992 passed by the Prescribed Authority and order dated 27.4.1995 passed by the 3rd Addl. District Judge, Dehradun.

Factual Aspects of the Case:

Briefly stated the facts giving rise to the present writ petition are that the petitioners are the tenants of the accommodations house no. 7, Naya Nagar, Dehradun. The respondent no.3 purchased the property in suit in November 1962. The respondent no.3 has filed the application for release on the ground that Sri Manzoor Ahmed was allotted a portion of the first floor of house no.7, Naya Nagar, Dehadun. Sri Manzoor

Ahmed one of the joint tenents of the said property died a few years ago at Dehradun and the petitioners are claiming to be his legal representatives and heirs.

Sri Abdul Kadir, the elder brother of the respondent no. 3purchased 2/3rd share of the house bearing No.7 Naya Nagar Dehradun in court auction in original suit No. 287 of 1951 and Execution Case No. 12 of 1959, Ram Kishan vs. Mohammad Ahmed of the Court of Munsif, Dehradun. Later on he purchased the remaining 1/3rd share from the competent authority, Evacaues Property, Moradabad Zone, Meerut on 13.11.1962. There was a partition between the brothers on 24th February 1979 and the partition Deed is registered in Book No.1, Vol. 1561 at Sl. No. 2311 on pages 59 to 67 on 21st March 1979 in the office of the Sub Registrar, Dehradun. As per the said partition deed the said property has fallen to the share of the petitioner. Thus the petitioners have become tenants of the respondent no.3 by operation of law. The petitioners have a flourishing business. They had property on Chakrauta Road, which they sold to the proprietors of M/S Krishna Palace, Picture Hall, Dehradun. The petitioners can easily find out the accommodation if they so wish. Whereas the landlord has no other property except the said property.

The petitioners have filed written statement and denied the averments made in the release application. They have stated that Sri Haji Abdul Qadeer had filed an application against the opposite parties in the year 1976 under section 21 of the U.P. Act No. XIII of 1972, which was rejected by the prescribed authority. The respondent no.3 is not the landlord and owner of the disputed property but Haji Abdul Qadeer has shown himself as owner and landlord of the disputed property. After rejection

of the application Hazi Abdul Qadeer had filed an appeal in the Court of District Judge, Dehradun which was also rejected. Hazi Abdul Qadeer is the landlord of the property in dispute and he purchased the same in the year 1962 in an auction. The respondent no. 3, his family along with his brother Haji Abdul Qadeer along with his family have been residing in a huge building. The respondent have also given description of the accommodation in possession of the petitioners. The respondents have further stated that Haji Abdul Qadeer has been allotted accommodation 6 Nayanagar, Dehradun.

Bona fide need:

The respondent no.3 has filed a release application on the ground that the number of family members in the house of respondent no.3 are 13. The house in question was solely purchased by Sri Abdul Qadeer in auction. The prescribed Authority vide order dated 28.2.1977 has rejected the application. The appal was also dismissed in 1977. Later on another application for release was filed on behalf of the brother of respondent no.3 Sri Haji Abdul Qadeer on the ground of personal need which was dismissed vide order dated 28.2.1977. The appeal filed against the order was also dismissed by the District Judge vide order dated 19.12.1977.

Thereafter the family was divided and a registered partition has taken place in the family. In pursuance of the family partition the present released application was filed in the year 1984. The landlord has filed the affidavit in support of the released application. The applicant has mentioned in the release application as under:

"*That the petitioner is employed in O.N.G.C. as Chargement, and he is posted in the Central Workshop,*

Kaulagarh, Dehradun. His family consists of himself, his wife and seven children. The names are given here under:

a) Petitioner

b) Smt. Zubaida Begum (Wife)

c) Km. Shabana Parveen- aged 13 years daughter

d) Master Mohd. Taraeq –10 years –son

e) Master Mohd. Sajid- 8 years- son

f) Master Mohd. Majid-6 years- son

g) Master Mohd. Aajim- 4 years- son

h) Km. Shahita Parveen-2 years- daughter)

i) Master Mohd. Kasim-6 months-son

Along with his affidavit 74-ka the petitioner has submitted affidavits of Maksud Ahamad, Makbul Ahamad, Smt. Neema Begum, Saiyad Mohd. Khalid, Altaf Ahamad, Manjur Ahamad and copy of Goshwara dated 13.9.89.

On behalf of respondent no.3 has filed copy of partition deed dated 23.2.79, notice dated 6.7.81, postal receipts, photo copy of ration card, copy of sale deed dated 17.11.61 and 13.11.62. He has also filed affidavit of Hazi Abdul, certified copy of the assessment of Nagar Palika for the year 1984-89 and postal receipts.

The Prescribed Authority, Dehradun has allowed the release application on 15.12.1992 and has recorded the findings on the bona fide need to the following effect:

जहॉ तक प्रार्थी द्वारा वास्तविक और तीव्र आवश्यकता का प्रश्न है प्रार्थी ने अपनी पेटीशन में स्वयं अपनी पत्नि तथा सात बच्चे जिनकी उम्र पेटीशन दायर करते समय क्रमशः दो वर्ष से लेकर 13 वर्ष तक थी, बताई है। दस साल के अंतराल के बाद अब दन बच्चों की उम्रें 12–13 साल से लेकर 23–24 साल तक की हो गई होगी। प्रार्थी ने अपनी याचिका में यह बात स्पष्ट रूप से उल्लेख किया है कि प्रार्थी व उसके परिवार के लोग अपने भाई अब्दुल कादिर

के साथ उनके हिस्से में रह रहें है और उनकी दया पर निर्भर दें तथा प्रार्थी व उनके परिवार के सदस्यों की गुजर एक कमरे में नहीं हो सकती। इसी बात को प्रार्थी ने अपने शपथपत्रों में भी जिनका उल्लेख ऊपर किया जा चुका है में भी किया है। विपक्षी द्वारा यह बात कही की गई कि प्रार्थी व उनके भाई अब्दुल कादीर के पास बहुत जगी है और उनके पास एक भवन के अतिरिक्त कई भवनों में स्थान है। जिनका उल्लेख किया जा चुका है अतःउन्हें विवादीत संपत्ति की आवश्यकता नही है। यह भी कहा गया है कि प्रार्थी एक धनवान व्यक्ति है। जहॉ तक विपक्षीगण के इस कथन का प्रश्न है उन्होनें अपने प्रतिवाद पत्र में और न अपने पक्ष में दाखिल किये गये शपथपत्रों यह बात कही है कि प्रार्थी क पास विवादित संपत्ति के अतिरिक्त उक्त भवन में और कितना स्थान है। अब्दुल कादिर के पास उपलब्ध स्थान को प्रार्थी द्वारा प्रस्तुत इस याचिका में नही देखा जा सकता। विपक्षीगण का यह कथन भी है कि प्रार्थी ने ओ0एन0जी0सी0 कालौनी में एक भवन प्राप्त कर लिया है और अब उनका परिवार सुखपूवर्क रह रहा है । इसके जबाब में प्रार्थी द्वारा यह बात स्वीकार की गई है कि जब उसके परिवार की गुजर बसर अब्दुल कादिर के साथ असम्भव हो गई तो उसने अपने विभाग से किराये पर एक भवन लिया। विद्वान अधिवक्ता अपीलार्थी ने यह तर्क प्रस्तुत किया कि जब प्रार्थी के पास रहने के लिये भवन उपलब्ध है तो उसकी आवश्यकता को ऐसी स्थिति ने सदभावी नही माना जा सकता में विद्वान अधिवक्ता के इस तर्क में कोई बल नही पाता क्योकि भवन स्वामी का किरायेदार में उपलब्ध भवन स्वंय में इस बात का घोतक है कि उसे अपने निजी भवन की रहने हेतू अवश्यकता है। दौरान तर्क प्रार्थी / प्रत्यार्थी के विद्वान अधिवक्ता ने यह बात बताई कि प्रार्थी का स्थानान्तरण आसाम में हो गया है। और उसे मिला हुआ भवन उसे रिक्त करना पडा है । इस बात से अपीलार्थी के विद्वान अधिवक्ता ने मेने समक्ष इंनकार नही किया। ऐसी स्थिति में अपर न्यायालय द्वारा प्रार्थीी की आवश्यकता को वास्तविक और तीव्र आवश्यकता मानने में काई भूल नहीं की गई है।

The petitioners have filed an appeal against the aforesaid order which was dismissed vide order dated 27.4.1995. Feeling

aggrieved the present writ petition has been preferred by the petitioners appellants.

Both the courts below have given concurrent findings on the point of bona fide need of the landlord. The landlord was ousted from his residential house and he is residing in the accommodation given by his employer. Thus the need of the landlord is bona fide.

In the case of Bega Begum 1979 A.I.R. SC page 272 the Apex Court has observed in case of eviction in every case the tenant has of suffer hardship and that cannot be a ground for refusing the release application. The observation of the Apex Court are quoted below:

> *Paragraph 13-" Moreover, section 11(1) (h) of the Act uses the words reasonable requirement which undoubtedly postulate that there must be an element of need as opposed to a mere desire of wish. The distinction between desire and need should doubtless be kept in mind but not so as to make even the genuine need as nothing but a desire as the High Court has done in this case. It seems to us that the connotation of the terms 'need' or 'requirement' should not be artificially extended to its language so unduly stretched or strained so as to make it impossible or extremely difficult for the landlord to get a decree for eviction. Such a course would defeat the very purpose of the Act, which affords the facility of eviction of the tenant to the landlord on certain specified grounds. This appears to us to be the general scheme of all the Rent Control Acts, prevalent in other States in the country. This Court has considered the import of the*

word 'requirement and pointed out that it merely connotes that there should be an element of need."

Paragraph – 19 "In this connection our attention was drawn to the evidence led by the defendants that the main source of their income is the hotel business carried on by them in the premises and if they are thrown out they are to likely to get any alternative accommodation. The High Court has accepted the case of the defendants on this point, but does not appear to have considered the natural consequences, which flow from a comparative assessment of the advantages and disadvantages of the landlord and the tenant if a decree for eviction follows. It is no doubt true that the tenant will have to be ousted from the house if a decree for eviction is passed, but such an event would happen whenever a decree for eviction is passed and was fully in contemplation of the legislature when section 11(1)(H) of the Act was introduced in the Act. This by itself would not be valid ground for refusing the plaintiffs a decree for eviction."

Paragraph 26 " Thus, on a careful comparison and assessment of the relative advantage and disadvantages of the landlord and the tenant it seems to us that the scale is tilted in favour of the plaintiff. The inconvenience, loss and trouble resulting for denial of a decree for eviction in favour of the plaintiffs far outweight the prejudice or the inconvenience which will be caused to the defendants. The High Court has unfortunately to weighed the eviction from that point of view."

Paragraph 28. " For the reason given above, the appeal is allowed. The judgment and decree of the High Court are set aside, and a decree for ejectment of the defendants from the house in dispute is hereby passed against the defendants. In the peculiar circumstances of this case, there will be no order as to costs."

Following the decision of Bega Begum, in the case of Jogendra Pal vs. Naval Kishore Behal, 2002 SC & FB, Rent Cases, 388 the Apex Court has held as under:

8. *The need for reasonable interpretation of rent control legislations was emphasized by this Court in Bega Begum v. Abdul Ahad Khan*[6]*. Speaking in the context of reasonable requirement of landlord as a ground for eviction, the Court guarded against any artificial extension entailing stretching or straining of language so as to make it impossible or extremely difficult for the landlord to get a decree for eviction. The Court warned that such a course would defeat the very purpose of the Act which afford the facility of eviction of the tenant to the landlord on certain specified grounds. In Kewal Singh v. Lajwanti this Court has observed, while the rent control legislation has given a number of facilities to the tenants, it should not be construed so as to destroy the limited relief which it seeks to give to the landlord also. For instance, one of the grounds for eviction which is contained in almost all the Rent Control Acts in the country is the question of landlord's bona fide personal necessity. The concept of bona fide necessity should be meaningfully construed so as to make*

the relief granted to the landlord real and practical. Recently in Shiv Sarup Gupta v. Dr Mahesh Chand Gupta[8] the Court has held that the concept of bona fide need or genuine requirement needs a practical approach instructed by the realities of life. An approach either too liberal or too conservative or pedantic must be guarded against.

9. *The rent control legislations are heavily loaded in favour of the tenants treating them as weaker sections of the society requiring legislative protection against exploitation and unscrupulous devices of greedy landlords. The legislative intent has to be respected by the courts while interpreting the laws. But it is being uncharitable to legislatures if they are attributed with an intention that they lean only in favour of the tenants and while being fair to the tenants, go to the extent of being unfair to the landlords. The legislature is fair to the tenants and to the landlords – both. The courts have to adopt a reasonable and balanced approach while interpreting rent control legislations starting with an assumption that an equal treatment has been meted out to both the sections of the society. In spite of the overall balance tilting in favour of the tenants, while interpreting such of the provisions as take care of the interest of the landlord the court should not hesitate in leaning in favour of the landlords. Such provisions are engrafted in rent control legislations to take care of those situations where the landlords too are weak and feeble and feel humble.*

10. *Both the learned counsel for the parties submitted that so far as the expression "his own use" as occurring in Section 13(3)(a)(ii)(a) is concerned, no occasion has hitherto before*

arisen enabling this Court making an authoritative interpretation and pronouncement. The nearest available decision is Bega Begum6 which has been referred to by the High Court in its impugned judgment and was relied on by Shri Sudhir Chandra, the learned Senior Counsel for the respondent landlord. Section 11(1)(h) of the J&K Houses and Shops Rent Control Act, 1966 provides for the tenant being evicted if the landlord requires the house for "his own occupation". The Court held that the provision is meant for the benefit of the landlord and therefore it must be so construed as to advance the object of the Act. The words "own occupation" contemplate the actual possession of the landlord whether for his own residence or for his business. Furthermore, the provision is wide enough to include the necessity of not only the landlord but also of the persons who are living with his as members of the same family. The words "own occupation" cannot be so narrowly interpreted as to indicate actual physical possession of the landlord personally and nothing more than that.

16. *A Division Bench of the Patna High Court has opined in Bidhubhushan Sen. V. Commr.*[16] *that the expression "his own occupation" as occurring in sub-section (3)(a) of Section 11 of the Bihar Building (Lease, Rent and Eviction) Control Act, 1947 does not mean only the occupation of the landlord himself but includes the occupation of other persons who live with the landlord and are economically dependent on him. The requirement of nephew, whose maintenance was the responsibility of the landlord was held to be covered by the expression "his own occupation" of the landlord.*

17. *In Puspa Lata Debi v. Dinesh Chandra Das*[17] *P.B. Mukharji, J. (as His Lordship then was) observed that the expression "for his own occupation" in Section 11(1)(f) of the W.B. Premises Rent Control (Temporary Provisions) Act, 1948 does not necessarily mean of the particular individual alone but must be wide interpreted to include the family and dependants. The context of social order, the habits and ideas of living and the religious and socio-religious customs of the community to which the individual concerned belongs are relevant determining factors."*

In Bahar Ahmad vs. Additional District and Sessions Judge V Fast Track Court, Dehradun and others {2003 (2) ARC 596, after relying upon the judgment of the Apex Court in Para 21, 22, 23, 24 and 25, it has been held as under:

"In Smt. Prativa Devi vs. T.V. Krishnan, 1987 SCFBRC 242, it ahs been held by the Apex court that since the landlord has no legal right to occupy any of the shops, the finding of the Appellate Court, therefore, cannot be interfered. The finding of the Apex Court are given below:

In considering the availability of alternative accommodation, the Court has to consider not merely whether such accommodation is available but also whether the landlord has a legal right to such accommodation. The appellant had established her bona fide personal requirement of the demised premises under section 14(1) (e) of the Act and her claim could not be disallowed merely on the ground that she was staying as a guest with a family friend by force of circumstances."

Similar view has been taken in the case of Smt. Sarla Ahuja vs. United India Insurance Co. Ltd; AIR 1999 SC 103. It has been held by the Apex Court as under:

"When a landlord asserts that he requires his building for his own occupation, the Rent Controller shall not proceed on the presumption that the requirement is not a bona fide. When other conditions of the clause are satisfied and when the landlord shows a prima facie case, it is open to the Rent Controller to draw a presumption that the requirement of the landlord is bona fide. It is often said by courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord, it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself."

In the case of Sardar Pritam Singh Vs. Sardar Prakash Singh reported in A.R.C. 1999 (2) page 338, Bench of Allahabad High Court observed as under:

> *" 18. Learned counsel for the petitioner then referred to the decision reported in 1996 (1) AWC 409. View taken in the decision reported in 1990 AWC 1508 has been reaffirmed and it is observed that tenant cannot dictate landlord as to how he would live and the need of the landlord must be commensurate with his status-keeping in mind his need both qualitatively and quantitatively."*

"20. In case reported in 1999 (1) ARC 188, it has been observed in paragraphs 9, 10, 14, 18, and 19 that there should be no interference if exercise of power is legal and no reasonable man will arrived at a different conclusion. In these decisions referred to above, this Court took the view that 'finding of fact' recorded after appraisal of evidence are no amenable and cannot be assailed. In the case reported in 1997 (2) ARC 498, learned Single Judge in paragraph 7 and 10 of the judgment observed that effect of subsequent event have to be taken into account and find out whether children had grow up and need of the landlord has become more pressing. The said observations are against stand taken on behalf of the respondent no.1."

"21. The two courts below recorded findings of fact completely ignoring imminent need of the landlord's family as if his family's need was statistic. No prudent man under normal circumstances could take a view, as has been done by the Courts below. Courts below ought to have taken into account the fact that family is to grow and within short span of time family members were bound to increase in all probabilities. Again children were to grow requiring additional accommodations. Further boy and girl, be brother and sister, could be forced to share one room and separate accommodation for their studies was required. The two Courts below erred in not appreciating the evidence on record in correct perspective. The findings recorded by the two Courts below are no findings of fact in the eye of law as they have been recorded by ignoring admitted facts,

material and relevant circumstances, namely, family of the landlord was bound to increase. Findings recorded in ignorance of plea of the landlord on this score vitiated in law and cannot be sustained and liable to be quashed in writ jurisdiction. In support reference may be made to the case reported in (1994) 4 SCC 1."

In the case of Dwarkaprasad Vs. Niranjan reported in 2003 SCFBRC 351 the Apex Court has held as under:

"A latest decision of this Court in Joginder Pal Vs. Naval Kishore Behal reported in 2002(5) SCC 397: 2002 SCFBRC 388, to which one of us (R.C.Lahoti,J.) was a party takes the same view. In fact, this judgment contains a detailed resume of the entire case law on this point and holds that the expression for "his own use" occurring in Section 13(3) (a)(ii) (a) of the East Punjab Urban Rent Restriction Act, 1949 has to be liberally construed and should be given a wide and useful meaning rather than a strict and narrow construction. The requirement of a member of family of the landlord who is dependent on the landlord for purposes of residence or for economic consideration can be considered as a requirement of the landlord."

So far as the partition is concerned it has been held in 1982 (1) ARC 526, that any accommodation which has come under partition deed , the tenant has no right to challenge said partition deed. It has been held as under:

"It is a well settled cardinal under that no tenant can be allowed to question the title of a landlord. If after the alleged partition, a tenant has attroned to a particular rest while co-

owner as his sole landlord, I apprehended that it will not be open to such a tenant to question the title of such a landlord on the ground that the transaction whereby his landlord became to sole owner of the property was a mala fide one and not a genuine one."

Both the courts below having considered the requirements of the landlord, I find no infirmity in the order passed by the Courts below.

Comparative Hardship:

Proviso to section 21 (1)(a) of Act No. XIII of 12972 provides as under:

> *"Provided also that the prescribed authority, shall, except in cases provided for in Explanation, take into account the likely hardship of the tenant from the grant of the application as against the likely hardship to the landlord from the refusal of the application and for that purpose have regard to such factors as may be prescribed."*

So far as the comparative hardship is concerned, in view of the judgment of the Apex Court in Shushila Vs. IInd A.D.J,Banda reported in 2003 SCFBRC 109 after considering the Rule 16, need of the landlord has been found to be bona fide and greater hardship lies in his favour rather than the petitioner. The observations of the Apex Court are quoted as under:

> *"As observed earlier it is clear that the length of period of tenancy as provided under clause (a) of sub-rule 2 of Rule 16 of Rules, 1972 is only one of the factors to be taken into account in context with other facts and*

circumstances of the case. It cannot be a sole criterion or deciding factor to order or not the eviction of the tenant. Considering the facts in the light of Rule 16 pressed into service on behalf of the respondent, we find that according to the guidelines provided therein balance tilts in favor of the unemployed son of the landlady whose need is certainly bonafide and has also been so accepted by the respondent before us."

As will appear from the proviso to section 21 (1)(a) of the Act that the likely hardship to the tenant from the grant to the application as against the likely hardship to the landlord from the refusal of the application alone has to be looked into after taking into consideration the factors.

In 1991 SC & FBRC 182, Bhagwan Das vs. Smt Jiley Kaur and others, the Apex Court has held as under:

"Thirdly, it was a case where there was even this additional circumstance that the appellant had brought no material on record to indicate that at any time during the pendency of this long drawn out litigation he made any attempt to seek an alternative accommodation and was unable to get it. In Mst. Bega Begum v. Abdul Ahad Khan [2] it was held that in deciding the extent of the hardship that may be caused to one party or the other, in case a decree for eviction is passed or is refused, each party has to prove its relative advantages or disadvantages and the entire onus cannot be thrown on the plaintiffs to prove that lesser disadvantages will be suffered by the defendants and that they were remediable."

After relying upon the judgment of Rejendra Kumar Gupta Vs. Gopal Krishan and others, A.I.R. 1995 Allahabad 82,

it has been held that suitable alternative accommodation, which may become available on an effort being made in that direction is also a factor to be considered and want or earnest efforts in looking for suitable alternative accommodation, disentitles protection given to the tenant while considering the comparative hardship of the parties. The observations in the decision of Munni Lal Gupta (supra) are quoted below:

> *" A suitable alternative accommodation which may become available on an effort being made in that direction is also in the comprehension of the expression and in the facts and circumstances of the case, it has been held that the petitioner was wanting in earnest efforts in looking for suitable alternative accommodation, notwithstanding the fact that the litigation between the parties had protracted to considerable stretched. In Rajendra Kumar Gupta Vs. Gopal Kishan and others, AIR 1995 Alld. 82 : 1994 ARC 11, it has been held by Sudhir Narain, J. and I concur with the view taken therein in that "one of the principles for considering comparative hardship of the parties is to find out as to whether the tenant had made a sincere efforts to find out alternative accommodation and had placed materials before the authorities to come to their conclusions that he made such an effort". The fact that earlier application for release, met the fate of rejection some 10 years ago, could not be projected backward to operate as an obstacle in the way of the release application being allowed as with the passage of time, the situation has undergone considerable change. Indubitable, landlord Sanjai Gupta did his M.A. after rejection of the earlier applications and his failure to secure employment for*

himself, lends congency to his moving the present application."

Relying upon the judgment of Apex Court Bega Begam Vs. Abdul Ahmad Khan reported in AIR 1979 SC 272, it has been observed in Prem Prakash Gupta and others Vs. Second Additional District Judge, Allahabad and others – Allahabad Rent Cases 1993 (1) page 77, that no doubt true that the tenant will have to be ousted from a house, if a decree of eviction has been passed, yet such an event by itself will not be a valid ground for refusing a decree for eviction. The observation in the case of Prem Prakash Gupta (supra) is quoted as below:

" As observed by this Court in its decision in the case of Rajeshwary Prasad Vs. Fateh Bahadur Chaturvedi and othrs reported in 1984 (1) A.R.C. 387, the bona fide need is the foundation of application for eviction of a tenant without which it cannot be allowed. Hardship is relative word"……..

In this case where there is inaction on the part of the tenant in searching for an alternative accommodation by seeking allotment or otherwise inspite of coming to know that the building in his tenancy is genuinely required by the landlord for satisfying his bona fide need, the question of relative hardships envisaged under the 4th proviso to section 21 of the Act deserves to be considered liberally in favour of the landlord specially when the bona fide need for the grant of release sought for is established. While it is true that a proviso embrace the field which is covered by the main provision and the main part cannot be construed in such a manner so as to render a proviso redundant yet under the

scheme of the Act, the 4th proviso to section 21 does not appear to fall within those exceptional cases where this proviso may be said to be a part of the substantive provision itself. It should also not be lost sight of that a proviso cannot be permitted to defeat the basis intent expressed in the substantive provision which, as is apparent from the perusal of section 21 of the Act is to enquire the availability of the demises premises to the landlord on his successfully establishing the bona fide requirement of the same for the purpose envisaged in that section.

That connotation of the term of the term 'requirement should not be artificially extended not its language so unduly stretched or strained as to make it impossible or extremely difficult for the landlord to get an order of release. Such a course would defeat the very purpose of the Act which affords the facility of eviction of the tenant to the landlord on certain specified grounds contemplated under section 21 of the act. The provisions contained in the Act strike a just balance between the genuine need of the landlord on the one hand and the great inconvenience and troubles of the tenants on the other. Since section 21 of the Act is meant for the benefit of the landlord, therefore, it must be so construed as to advance the object behind the said provision. The tenant has to establish that if he is evicted he will suffer greater hardship as compared to the landlord and must lead clear evidence to show that inspite of the best efforts he was unable to get another alternative suitable accommodation in the absence whereof the scale of relative hardship may be tilted in favour of the landlord as the inconvenience, loss or trouble resulting from a denial of

the order of release in favour of the landlord will for outweight the prejudice or the inconvenience which may likely be caused to the tenants."

In Badrinarayan Chunilal Bhutada Vs. Govindram Ramgopal Mundada 2003 SCFBRC 166 the Apex Court observed as under:

"In Piper Vs. Harvey, 1958 (1) All. E.R. 454, the issue as to comparative hardship arose for the consideration of Court of Appeals under the Rent Act, 1957. Lord Denning opined: "When I look at all the evidence in this case and see the strong case of hardship which the landlord put forward and when I see that the tenant did not give any evidence of any attempts made by him to find other accommodation, to look for another house, either to by or to rent, it seems to me that there is only one reasonable conclusion to be arrived at, and that is that the tenant did not prove (and the burden on him to prove) the case is of greater hardship." Hudson, L.J., opined: "The tenant has not been able to say anything more than the minimum which every tenant can say, namely, that he has in fact been in occupation of the bungalow and that he has not at the moment any other place to go to. He has not, however, sought to prove anything additional to that by way of hardship, such as unsuccessful attempts to find other accommodation, or indeed, to raise the question of his relative financial incompetent as compared with the landlord." On such state of the case, the Court answered the issue as to comparative hardship against the tenant and ordered his eviction."

Both the Courts below have recorded the findings of comparative hardship in favour of the landlord and I find no infirmity in the order passed by both the courts below.

Interference under Article 226/227 of Constitution of India:

The jurisdiction under article 226/227 of the Constitution of India is limited and High Court cannot act like a Court of appeal so as to interfere with the findings of the Prescribed Authority on the question of *bona fide* hardship.

The Apex Court in the case of Surya Devi Rai vs. Ram Chandra Rai (2003) 6 SCC 675. The observations are quoted below:

> *(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which is does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner to permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.*
>
> *(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictate it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the*

abovesaid two jurisdictions is sought to the invoked during the pendency of any suit or proceedings in a subordibate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against an entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High

Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case."

After relying upon the various judgments of the Apex court and the High Courts in Radha Kant Dubey vs. Vth Addl. District Judge, Kanpur Nagar & others [2001 (44) ALR 14] it has been held that the extraordinary jurisdiction of High Court cannot be invoked to disturb the concurrent finding of fact. It has been held as under:

"It is well established proposition of law that finding with regard to the bonafide need of the landlord as that of the hardship is a finding of fact which cannot be disturbed in writ jurisdiction under Article 226 of the Constitution of India. In support of his submission he placed reliance on some decision in the case of Kamla Sarin vs. Shyam Lal and others, 1984 (2) All. R.C. 344; in the case of Munni Lal and another v. Prescribed Authority and another, AIR 1978 SC 29, 1981 ARC 470 in the case of Nathu Lal vs. Radhey, A.I.R. 1974 SC 1696."

In view of the aforesaid proposition of law, writ petition is devoid of merit and the finding of fact recorded by the courts below cannot be interfered under Article 226/227 of the Constitution of India. However, time till 31st December 224, is granted to the petitioner to vacate the premises in dispute provided undertaking is given by the petitioner by 15th November 2004, before the Prescribed Authority.

Subject to the aforesaid observation, the writ petition is dismissed. No order as to costs.

23.8.2004 **(Rajesh Tandon J.)**

* Dhyani